

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILLIP ARNOLD,

Plaintiff,

v.

CITY OF LAKEWOOD, a municipality;
and ANDY HALL, in his personal and
official capacities,

Defendants.

CASE NO. C10-5907RBL

ORDER

THIS MATTER comes on before the above-entitled court upon Defendant City of Lakewood's Motion for Judgment on the Pleadings [Dkt. #15]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Plaintiff's Amended Complaint alleges that the City of Lakewood and Lakewood Police Officer Andy Hall violated his civil rights. Plaintiff was shot by Officer Hall following a traffic stop and subsequent evasion. Plaintiff alleges that the City of Lakewood is liable pursuant to *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978).

The City of Lakewood moves for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) arguing that Plaintiff has failed to make sufficient factual allegations to "state a claim to

1 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Bell Atlantic*
2 *Corp. v. Twombly*, 550 U.S. 544 (2007).

3 A review of Plaintiff’s Amended Complaint [Dkt. #13] reveals that the Defendant’s
4 motion has merit. Plaintiff, however, should be given leave to amend the complaint unless such
5 amendment would be “futile.” *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Therefore,
6 Defendant’s Motion for Judgment on the Pleadings [Dkt. #15] is **DENIED** without prejudice.
7 Plaintiff shall file an Amended Complaint within ten (10) days of entry of this Order setting forth
8 a factual basis for his *Monell* claim against the City of Lakewood. The failure to file an
9 Amended Complaint will result in the granting of Defendant’s Motion and the dismissal of the
10 City of Lakewood from this action.

11 **IT IS SO ORDERED.**

12 The Clerk shall send uncertified copies of this order to all counsel of record, and to any
13 party appearing pro se.

14 Dated this 28th day of April, 2011.

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BENJAMIN H. SETTLE

19 United States District Judge
20 for Ronald B. Leighton
21 United States District Judge
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